

BOARD OF APPEALS CASE NO. 5252

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BEFORE THE

APPLICANTS: David & Mary Jo Day

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ZONING HEARING EXAMINER

**REQUEST: Variance to construct a sunroom
within the required rear yard setback;
368 Point-to-Point Road, Bel Air**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 4/24/02 & 5/1/02

HEARING DATE: June 5, 2002

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Record: 4/26/02 & 5/3/02

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ZONING HEARING EXAMINER'S DECISION

The Applicants, David A. Day and Mary Jo Day, are requesting a variance, pursuant to Section 267-36B, Table V, of the Harford County Code, to allow a sunroom within the 35 (thirty-five) foot rear yard setback in an R2/Urban Residential District.

The subject property is located at 368 Point to Point Road, Bel Air, Maryland 21015, in the First Election District, and is more particularly identified on Tax Map 56, Grid 2E, Parcel 322. The parcel contains approximately 0.174 acres.

The Applicant, Mary Jo Day, appeared, and testified that she and the Co-Applicant, David Allen Day, are the owners of the subject property. Mrs. Day stated that she has read the Department of Planning and Zoning's Staff Report, and that she has no changes or corrections to that document.

The witness described the subject property as a small, 0.174 acre, rectangular shaped lot, with a flat area where the existing dwelling is constructed, and a steep hill at the rear property border. She also stated that the topography is rolling, in that the right side of the property slopes down, and the left side of the property slopes up. The property is improved by a two-story dwelling with an attached one-car garage, a concrete and slate patio attached to the rear of the dwelling, and a small pond located on the right side of the patio. There is a row of trees approximately 20 to 25 feet tall along the rear property line, which screen the rear yard from view by the adjoining rear property.

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The witness testified that the Applicants are requesting a variance to enclose the existing patio, to create a sunroom which can be used year round. The proposed sunroom will be 29 feet from the rear property line at its closest point, and will not encroach any further into the rear yard setback than the existing patio.

Mrs. Day indicated that the property is located in the Hunter's Run development, and that there are similar sunrooms in that neighborhood. She introduced a letter (Applicants' Exhibit No. 1) from the Hunter's Run Homeowners Association stating that its design review board had approved the Applicants' plan, as submitted, for a sunroom addition.

The Applicant also introduced Applicants' Exhibit 2, which is a list of addresses for nine other houses in the Hunter's Run neighborhood which have additions approved by the Homeowners Association. The owners of the property located at 353 Point to Point Road received a setback variance (Board of Appeals Case No. 5128) in which they were granted permission to encroach into the rear yard setback conditioned on the installation of vegetative screening. The witness testified that she has personally viewed the sunrooms constructed at each of the nine locations listed. She stated that the sunroom which the Applicants propose to construct will be compatible with the existing dwelling, and other sunrooms which she has observed in the neighborhood.

Mrs. Day introduced a series of photographs (Applicants' Exhibit Nos. 3A-3F) showing the rear yard and existing patio. Applicants' Exhibit No. 3A, B, and C, depict the view from the back door of the property looking toward the rear property line. Applicants' Exhibit No. 3D is a photograph of the existing patio taken from the top of the hill located at the rear of the property. Applicants' Exhibit No. 3E shows a view of the existing patio from the adjacent property to the east, and Applicants' Exhibit No. 3F shows a view of the existing patio from the yard of her neighbor to the west.

Mrs. Day then introduced Applicants' Exhibit No. 4, which is a proposal submitted by the contractor they have retained to construct the sunroom. Included in that proposal is a description and drawing of the proposed sunroom. The sunroom would be approximately 340 square feet, and contain seven windows, and one exterior door. The siding, roof, and gutters would match those found on the existing dwelling.

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The witness testified that, because the proposed sunroom will be compatible with both the existing dwelling, and other sunrooms in the neighborhood, she does not believe the requested variance would have any adverse impact on adjoining properties. In addition, the rear yard is heavily landscaped, and the rear property line is screened from view of the adjoining rear property by tall evergreens.

The Department of Planning and Zoning recommended approval of the subject request in its May 21, 2002 Staff Report, stating that;

“The Department finds the subject property unique. There is a substantial elevation change between the subject property and the property located to the rear. This area is heavily landscaped. The request, if approved, should not have an impact on the adjacent properties or the intent of the Code.”

No witness appeared in opposition to the requested variance.

CONCLUSION:

The Applicants, David A. Day and Mary Jo Day, are requesting a variance, pursuant to Section 267-36B, Table V, of the Harford County Code, to allow a sunroom within the 35 (thirty-five) foot rear yard setback in an R2/Urban Residential/Conventional with Open Space District. The proposed addition would reduce the required setback from 35 feet to 29 feet. Harford County Code Section 267-36B, Table V: Design Requirements for Specific Uses in an R2/Urban Residential District, provides for a minimum 35 foot rear yard setback.

Section 267-11 of the Harford County Code permits the granting of variances, stating that:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

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The Maryland Court of Special Appeals set forth a two-prong test for determining whether a variance should be granted in the case of Cromwell v. Ward, 102 Md. App. 691, (1995). This two-prong test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique if there is a finding that a peculiar characteristic or unusual circumstance relating only to the subject property, causes the zoning ordinance to impact more severely on that property than on surrounding properties. Cromwell, supra, at 721. If the subject property is unique, the hearing examiner may proceed to the second prong of the test. The second prong requires a determination as to whether literal enforcement of the zoning ordinance with regard to the unique property would result in practical difficulty or unreasonable hardship to the property owner.

The Hearing Examiner finds that the subject property is unique. The topography is rolling to steep, and the lot slopes upward from the road to the house, and then from the back of the house to the rear property line. The lot also slopes down to the left side of the property, and up from the right side of the property. Thus, the first prong of the Cromwell test has been met.

Having first found that the subject property is unique, it must next be determined whether denial of the requested variance would create an unusual hardship or practical difficulty for the Applicants. The Hearing Officer finds that literal enforcement of the Code would result in practical difficulty in this case because the small lot size, and the placement of the home on the property, result in limited potential locations for the proposed sunroom. If the requested variance is not granted, the Applicants will be unable to construct a sunroom in the area of the existing patio, which would enable them to utilize the space on a year round basis.

Finally, the Hearing Examiner finds that the granting of the requested variance will not be substantially detrimental to adjacent properties, or materially impair the purpose of the Code or the public interest. Many other houses in the Hunter's Run neighborhood have attached sunrooms. In addition, the proposed sunroom would be compatible with both the existing dwelling and other properties in the neighborhood. The roof and siding for the proposed sunroom will match those of the existing dwelling.

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The Hearing Examiner recommends approval of the Applicants' request subject to the following conditions:

1. That the Applicants obtain all necessary permits and inspections for the proposed construction.
2. That the Applicants not encroach further into the setback than the distance requested herein.

Date: JULY 2, 2002

Rebecca A. Bryant
Zoning Hearing Examiner